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HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 27034 of 2003

Dated 26th September, 2007

Between
A.Baji Rao

…Petitioner

and
The Commissioner, Disabled Welfare & State Commissioner
Under Persons with Disabilities Act 1995, 6th Floor,
Chandra Vihar, Nampally, Hyderabad, and anr.

…Respondents.

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.27034 of 2003

ORDER:

In this Writ Petition, the petitioner seeks Writ of Prohibition, to prohibit the first respondent from proceeding further in Case No.118 of 2003.

The second respondent has filed a complaint dated 28-8-2003 before the first respondent-Commissioner, Disabled Welfare. In the said complaint, it is stated that the second respondent is residing in D.No.54-9-22/A, situate at Jayaprakash Nagar of Vijawada and he had constructed the said house after purchasing a vacant site admeasuring 100 square yards and on the southern side of his house, the petitioner herein purchased the house site and constructed a house, and there is a common passage in between the said two houses. It is stated in the complaint by the second respondent that he is having two permanent disabled daughters and as per the doctor's advice, on his request, milk vendor, vegetable vendor, fruits and flowers vendor, cable

collection agent etc., were coming to his house to interact with his children so as to improve their skills, but, however, the petitioner herein is not allowing them to use the said passage and harassing his children and also is interfering with the construction of ramp, which was constructed to connect his house with the road. It is further stated that basing on his complaint, Case No.118 of 2003 was registered on the file of the first respondent and the petitioner was issued notice inviting his comments. The petitioner also filed detailed explanation to the notice issued by the first respondent. While generally denying the allegations of the second respondent, it is stated that there was no harassment at all from his side as alleged by the second respondent and in fact the said complaint was filed with false allegations and suppressing material facts and only to gain benefit in disposing of the suit in OS.No. 3050 of 2003 filed by the second respondent in the Court of the learned III Additional Junior Civil Judge, Vijayawada seeking permanent injunction from interfering with the passage by the petitioner, in his favour. In the proceedings initiated before the first respondent, the second respondent also filed written arguments and at that stage, the petitioner approached this Court and filed the Writ Petition.

The Writ Petition is filed mainly on the ground that having regard to the nature of the complaint, it is beyond the scope of powers conferred on the first respondent under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act 1995 and in spite of the same, the first respondent is taking steps in favour of the second respondent.

However, With regard to allegations of the first respondent-Commissioner, it is not necessary to go into the same, as much as it is stated that there is a change in the office of the first respondent during the pendency of the Writ Petition. It is submitted by Sri C.Raghu,

learned Counsel appearing for the petitioner that in view of the provisions under the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act 1995, there is no such power conferred on the first respondent to interfere with the civil disputes between the petitioner and the second respondent and in that view of the matter, the proceedings initiated are without jurisdiction.

Prior to the enactment of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act 1995, there was no separate Legislation to deal with the people with disabilities with regard to protection of their rights. With the prime object and to have full participation and equal opportunities for the people with disabilities, the Act, namely, the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act 1995 is brought into force. Sections 61 and 62 of the said Act deal with the powers of the Commissioner. Sections 61 and 62 of the Act read as follows:

"**61: POWERS OF THE COMMISSIONER**:-The Commissioner within the State shall,--

(a) co-ordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;

(b) monitor the utilization of funds disbursed by the State Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. COMMISSIONER TO LOOK INTO COMPLAINTS WITH

RESPECT TO MATTERS RELATING TO DEPRIVATION OF RIGHTS OF PERSONS WITH DISABILTIES:--Without prejudice to the provisions of Section 61, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to,--

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of laws, rules bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate governments and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with appropriate authorities."

It is submitted by the learned Counsel for the petitioner that there is no power conferred on the first respondent to interfere with the civil dispute with regard to construction of ramp, as much as the same is seized before the Civil Court in the suit filed by the second respondent. However, if the contents of the complaint filed by the second respondent are looked at, precisely, there is not only dispute with regard to construction of ramp, but also, harassment against the children of the complainant-second respondent. Though it is the case of the petitioner that the said allegations are false and concocted for the purpose of filing the complaint, but the same are the grounds which have to be considered by the first respondent-Commissioner. For the purpose of considering the grant of relief as claimed in the Writ Petition, the correctness or otherwise of the allegations of the second respondent cannot be gone into in this petition, which is filed under Article 226 of the Constitution of India, and it is for the Commissioner, before whom the petitioner had already filed his defence, to consider the same. Though allegation with regard to interference with the construction of ramp is also made in the complaint, but however, if the contents of entire complaint are looked at, it cannot be said that the Commissioner lacks jurisdiction to entertain the complaint. With regard

to construction of ramp and Civil rights, the same is seized before the Civil Court, but, however, the other allegations in the complaint which are within the scope of provisions of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act 1995, particularly under Section 62 of the Act, can be looked into by the Commissioner. It is further contended by the learned Counsel for the petitioner that after the second respondent sold his property to third party, the suit filed by him was dismissed for default. But however, the same are the matters, which the first respondent can look into while passing appropriate orders in Case No.118 of 2003. As much as it is a case to enquire into the correctness or otherwise of the allegations made by the second respondent, I dispose of the Writ Petition directing the first respondent to consider the complaint filed by the second respondent and defence put forth by the petitioner and pass appropriate orders, in accordance with law.

Subject to the above direction, the Writ Petition is disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 26-9-2007.
Msnr.